

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHANE F. LETRUDET

Appeal No. 98-1031
Application 08/674,667¹

ON BRIEF

Before McCANDLISH, *Senior Administrative Patent Judge*, PATE
and STAAB, *Administrative Patent Judges*.

STAAB, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1, 2, 4-11, 15-19 and 21-23. Claims 3, 12-14

¹ Application for patent filed July 2, 1996.

and 20², the only other claims pending in the application, have been objected to as depending from a rejected base claim, but indicated as being allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.

The Invention

Appellant's invention pertains to a pallet having upper and lower members which are configured to be easily and quickly connected together with a minimum of operator error (specification, page 2). To this end, the upper and lower members are provided with interlocking formations 36, 50 (see fig. 2) that provide a "snap" engagement when the members are brought together. Independent claim 1, a copy of which is found in the appendix to appellant's brief, is illustrative of the claimed subject matter.

The Applied Prior Art References

The references of record relied upon by the examiner in

² Claim 20 was not separately treated in the final rejection, but the examiner on page 5 of the answer expressly included it among the claims objected to and allowable if rewritten in independent form.

Appeal No. 98-1031
Application 08/674,667

support of rejections under 35 U.S.C. § 103 are:

Christie	5,094,175	Mar. 10, 1992
Needham et al. (Needham)	5,527,585	Jun. 18,
		1996

Metallwerke ³	2,101,346	Mar. 31, 1972
(French Patent Document)		

Christie, the examiner's primary reference, discloses a pallet having an upper section 8a made up of a plurality of subsections 10, 30, and a lower section 8b made up of a plurality of subsections 40. Upper section 8a includes downwardly extending hollow members 50 each having a tube member 56 located therein (see figs. 5 and 6). Similarly, lower section 8b includes upwardly extending hollow members 20 (see figs. 1-3) each having one or more post members 26 located therein. In joining the upper and lower sections, the upwardly extending hollow members 20 are sized to receive respective downwardly extending hollow members 50 and the tube members 56 are sized to receive respective post members 26 (see fig. 7). After the sections are so mated, the upper ends

³ Our understanding of this foreign language patent document is derived from a translation prepared in the Patent and Trademark Office. A copy of that translation is appended to this opinion.

of the posts are deformed as at 26a to lock the upper and lower sections together.

French patent document 2,101,346 to Metallwerke pertains to a plastic pallet comprising a hollow blow molded platform 4 and a plurality of plastic tubular support elements 1 secured therein, and in particular to the provision of an enhanced connection between the platform and the support elements (translation, paragraph spanning pages 4 and 5). As is made clear from a reading of the translation as a whole, the support elements 1 are embedded in the platform 4 during the step of blow molding the platform. See, for example, the Metallwerke translation at page 4, lines 10-13, page 9, lines 7-11, and page 12, lines 12-26. The thrust of Metallwerke is to improve or enhance the connection between the support elements and the platform by providing the support elements 1 with a variety of protrusions (e.g., radial ribs 3, longitudinal ribs 5 and/or circumferential rib 11).

The protrusions, which can be in the form of knobs, ribs crossing each other in the center of the base, etc..., penetrate into the still plastic substance of the synthetic material plate when the mold is closed, and thus ensure the flow and modeling of the plate's material. . . . [T]he protrusions ensure additional anchoring of the support element in the

plate's material. [Translation, page 7, lines 1-6.]

Needham discloses a pallet made of plastic material and including hollow tapered feet 30.

The Rejections

Claims 1, 2, 5-11, 17-19, 21 and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Christie in view of Metallwerke. Claims 4, 15, 16 and 23 stand similarly rejected with further reliance on Needham.

The examiner's foundation position is set forth on page 4 of the answer and reads as follows:

The patent to Christie teaches structure substantially as claimed including a lower member (10) having a plurality of protrusions and holding fingers (26, 26b), an upper member including a leg with an engagement surface (fig. 7), the only difference being that the engagement surface does not comprise a notch in a side wall. However, the patent to Metallwerke (figs. 2-3) teaches the use of such structure. It would have been obvious and well within the level of ordinary skill in the art to modify the structure of Christie to include a notch in the side wall as the engagement structure, as taught by Metallwerke, used as an alternative conventional connecting structure in the same intended purpose, thereby providing structure as claimed. The particular size of the pallet structure, shape and number of the fingers are matters of choice and desirability depending on how much and where attachment is needed which would have been well within the level of ordinary skill in the art.

Opinion

Considering first the standing rejection of claims 1, 2, 5-11, 17-19, 21 and 22 as being unpatentable over Christie in view of Metallwerke, the examiner has implicitly found that posts 26 and deformed ends 26a of Christie correspond to the claimed protrusions on the lower member having laterally extending holding fingers, and that members 50 of Christie correspond to the claimed downwardly extending legs on the upper member having at least one side wall. Accepting for the sake of argument these findings, it is apparent, and the examiner does not argue otherwise, that Christie still lacks a notch in the side wall of the upper member engageable with one of the holding fingers of the lower member, as called for in each of the independent claims on appeal. As we understand it, it is the examiner's position that it would have been obvious to one of ordinary skill in the art, in view of the circumferential rib 11 of Metallwerke's support element 1 (see figs. 5 and 6) and the unnumbered groove in Metallwerke's platform 4 that envelops that rib (see, for example, fig. 1), to provide a notch in Christie's upper member to receive the deformed ends 26a of the lower member's post 26. It is our

view, however, that this modification amounts to a hindsight reconstruction of the claimed subject matter based on appellant's disclosure rather than on anything fairly taught by the references themselves.

The connection between Metallwerke's platform 4 and support elements 1 at circumferential rib 11 is a connection between the platform and its tubular support elements formed *during the step of blow molding the platform*. Thereafter, two such composite members resulting from the molding operation can be joined together (see fig. 3) to form a pallet having an upper deck and a

lower base (translation, page 8, lines 8-17). When viewed in this light, it seems to us that the composite members emerging from Metallwerke's blow mold correspond to Christie's upper and lower members 8a, 8b and that the molded connection at Metallwerke's circumferential rib 11 at best would have suggested to one of ordinary skill in the art to form Christie's upper and lower sections 8a, 8b as composite structures with the hollow members 20 and 50 joined to their respective platforms by molded joints like those seen in

Appeal No. 98-1031
Application 08/674,667

Metallwerke at the circumferential rib. We are at a loss as to how, or why, the ordinarily skilled artisan would have considered Metallwerke's teachings at circumferential rib 11 to be of any relevance to the connection of Christie's upper and lower members 8a, 8b together other than through the use of impermissible hindsight gleaned from first reading appellant's disclosure. In light of the foregoing, we will not sustain the standing rejection of claims 1, 2, 5-11, 17-19, 21 and 22 as being unpatentable over Christie in view of Metallwerke.

We have also carefully reviewed the Needham reference additionally cited by the examiner against claims 4, 15, 16 and 23 but find nothing therein which makes up for the deficiencies of Christie and Metallwerke discussed above. Accordingly, we

also will not sustain the standing rejection of claims 4, 15, 16 and 23 as being unpatentable over Christie in view of Metallwerke and further in view of Needham.

The decision of the examiner is reversed.

REVERSED

Appeal No. 98-1031
Application 08/674,667

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Appeal No. 98-1031
Application 08/674,667

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